**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Federal-State Joint Board on | ) | CC Docket No. 96-45 |
| Universal Service | ) | |

# REPLY COMMENTS
# of the
# RURAL TELECOMMUNICATIONS ASSOCIATIONS


**Organization for the**
**Promotion and Advancement of**
**Small Telecommunications Companies**

**Rural Independent Competitive Alliance**

**Rural Telecommunications Group, Inc.**


September 20, 2004

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## SUMMARY

The FCC should reject a primary line limitation on universal service support as well as a cap on per-line support upon competitive entry. Instead, the FCC should adopt the Rural Telecommunications Associations' interim plan (Attachment A) to control the growth of the High-Cost universal service program while it considers long-term modifications to the basis of support for all ETCs in rural service areas.

The overwhelming majority of commenters oppose limiting support to primary lines. For rural carriers, a primary line limitation would make a critical source of their network cost recovery highly unstable and unpredictable. If rural carriers are uncertain as to whether they will be able to recover their network costs, the continued modernization and maintenance of rural networks will be jeopardized, as carriers will be reluctant to invest in infrastructure. Without continuous investment in the network, rural consumers will no longer have access to quality services, including advanced services, that are reasonably comparable to those offered in urban areas. Thus, a primary line limitation would fail to provide support that is sufficient to achieve the universal service objectives of the 1996 Act.

The issue raised most often by commenters regarding a primary line limitation is the administrative complexity of implementation. In particular, the comments of USAC suggest that the potential for waste, fraud, and abuse under a primary line policy would be great, and the cost to prevent it significant.

Similar to a primary line limitation, a cap on per-line support would also be antithetical to the Act's universal service principles and should not be adopted. Freezing per-line support in competitive study areas would discourage investment in rural

infrastructure. It would constrain a rural carrier's ability to pay for the restoration of facilities following a natural disaster. It also fails to take into account external cost increases, which can rise faster than the rate of inflation.

In its Recommended Decision, the Joint Board found that much of the growth in the High-Cost program is due to supplemental connections provided by wireless CETCs. It also found that funding CETCs based on the ILEC's costs may not be "economically rational." Numerous commenters agree that instead of adopting a primary line limitation, which skirts the issues that the Joint Board outlined, the FCC should address these problems head-on and in a manner that promotes universal service rather than defeating it. The Associations' plan would do just that.

The Associations' plan provides minimum guidelines to be used by regulators when reviewing ETC applications in rural service areas, which would help to ensure that ETC designations are consistent with the public interest. The plan would also establish a tiered series of ratios that provide wireless CETCs with a safe harbor percentage of the ILEC's per-line support. This would begin to recognize that equal per-line support for carriers with significantly different costs, incentives, and responsibilities is needlessly inflating the size of the fund.

There is a sufficient record for the FCC to begin a transition to an economically rational system in which there is a connection between the support received by each carrier and the need for that support. The tiered safe harbor percentages in the Associations' plan would begin the transition to cost-based support for wireless ETCs on the basis of publicly available investment data. As an interim measure, it is well within the FCC's discretion to adopt, especially because it is only a safe harbor rule.

The majority of commenters support the adoption of standardized minimum federal guidelines for regulators to use when considering ETC applications for rural service areas. Guidelines would aid regulators in conducting a proper public interest test in rural service areas. Minimum eligibility requirements are also necessary to ensure that carriers designated as ETCs are qualified to take on the obligations of being a carrier of last resort. The Associations urge the Commission to adopt the seven minimum guidelines included in its plan.

In particular, it is imperative that a guideline be adopted that encourages regulators to consider the long-term impact that ETC designations in high-cost rural service areas will have on the fund. It is logical to assume that the larger the amount of per-line support that is available, the more likely that carriers will seek ETC status in the area, particularly once one CETC has been designated. By implementing the Associations' proposed tiered safe harbor ratios, it will greatly curb the problem of wireless CETCs receiving excessive per-line support amounts.

The disaggregation of a rural ILEC's support is not a cure-all for creamskimming. The FCC has correctly recognized that disaggregation may not be a viable alternative for reducing creamskimming where the cost characteristics of the incumbent and competitor differ substantially, such as when the CETC is a wireless carrier.

Finally, the Associations' agree with the Joint Board that the FCC should retain its existing procedures for redefinition of a rural service area. These procedures rightfully maintain a study area presumption, and provide the FCC with the necessary discretion to analyze the potentially harmful impact of a rural service area redefinition.

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## I. INTRODUCTION

The Rural Telecommunications Associations (the Associations)[1] hereby submit reply comments in response to the Federal Communications Commission's (Commission or FCC) Notice of Proposed Rulemaking seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).[2] The Joint Board's Recommended Decision concerns the FCC's rules relating to high-cost support

[1] The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members include both rural commercial and cooperative companies and together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37) and provide a wide range of communications services, including dial-up Internet access, broadband, wireless, competitive local exchange carrier (CLEC), long-distance and video services.
The Rural Independent Competitive Alliance (RICA) is a national trade association with more than 80 CLECs that are affiliated with rural ILECs and provide facilities-based service in rural areas throughout the United States.
The Rural Telecommunications Group (RTG) is a national trade association dedicated to promoting wireless opportunities for rural telecommunications companies. RTG's members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004).

in competitive study areas, the rules regarding support for second lines, and the process for designating competitive eligible telecommunications carriers (CETCs).

Consistent with the position taken by the overwhelming majority of commenters, the Associations urge the FCC to jettison the recommendation of the Joint Board to implement a primary line limitation on support and/or cap on per-line support upon competitive entry. Instead the FCC should adopt the Associations' interim plan (Attachment A) for controlling the growth of the High-Cost universal service program. The plan would establish a tiered series of ratios that provide wireless CETCs with a safe harbor percentage of the ILEC's per-line support. It would also establish strong minimum guidelines for state and federal regulators to use when evaluating CETC applications for rural service areas. Taken together, these two components of the plan would directly address the root causes of growth in the High-Cost universal service program. More importantly, the plan would ensure that all eligible telecommunications carriers (ETCs) continue to receive predictable and sufficient support that achieves the universal service objectives of the Telecommunications Act of 1996 (1996 Act, the Act) while the FCC considers a long-term basis of support for all ETCs in rural service areas.

## II. THE COMMISSION SHOULD REJECT A PRIMARY LINE LIMITATION ON SUPPORT, AS WELL AS A CAP ON PER-LINE SUPPORT, AND INSTEAD ADOPT THE ASSOCIATIONS' INTERIM PLAN TO CONTROL THE GROWTH OF THE FUND

### A. Commenters overwhelmingly reject a primary line limitation on support

The vast majority of commenters, including wireline and wireless carrier interests and state commissions, oppose limiting support to a single connection to the subscriber.[3]

[3] *See*, John Staurulakis, Inc. (JSI), pp. 6-12; Montana Independent Telecommunications Systems (MITS), pp. 8-12; BellSouth, pp. 8-11; South Dakota Telecommunications Association and Townes

Like the Rural Telecommunications Associations, commenters explain the numerous ways in which a primary line limitation would be disastrous for both consumers and service providers. It runs contrary to the universal service principles in Section 254 of the 1996 Act and would be extremely onerous and costly to implement.

Commenters explain that a primary line limitation fails to account for the fact that carriers build networks to serve an entire area. A large portion of these network costs are fixed, "…and, particularly in rural markets, those costs need to be supported in order that a carrier can offer supported services…at prices and quality comparable to those in urban areas."[4] For rural carriers, a primary line limitation would make an essential source of their network cost recovery highly unstable and unpredictable. If rural carriers are uncertain as to whether they will be able to recover their network costs, the continued modernization and maintenance of rural networks will be jeopardized, as financial institutions will be reluctant to lend, and carriers will be reluctant to invest.[5]

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Telecommunications, Inc. (SDTA/Townes), pp. 5-8; Telecom Consulting Associates (TCA), pp. 11-13; CenturyTel, Inc., pp. 15-23; Oregon-Idaho Utilities and Humboldt Telephone Company (OIU/HTC), p. 6; Alaska Telephone Association (ATA), pp. 6-10; GVNW Consulting, Inc. (GVNW), pp. 8-11; The Western Telecommunications Alliance (Western Alliance), pp. 19-38; National Telecommunications Cooperative Association (NTCA), pp. 12-14; The Nebraska Rural Independent Companies (Nebraska Companies), pp. 14-24; Independent Telephone & Telecommunications Alliance (ITTA), pp. 3-13; National Exchange Carrier Association (NECA), pp. 4-17; United States Telecom Association (USTA), pp. 19-21; Iowa Utilities Board, pp. 6-8; TDS Telecommunications Corporation (TDS Telecom), pp. 18-25; Public Utility Commission of Oregon (Oregon Commission), p. 7; Beacon Telecommunications Advisors, LLC (Beacon), pp. 7-19; Fred Williamson & Associates, Inc. (FW&A), pp. 33-42; Mid-Sized Carrier Coalition, pp. 20-32; Coalition of State Telecommunications Associations and Rural Telephone Companies (Coalition of State Associations), pp. 13-15; Regulatory Commission of Alaska (RCA), pp. 3-9; CC Communications, pp. 6-12; National Tribal Telecommunications Association, pp. 9-11; Hopi Telecommunications, Inc., pp. 3-9; Centennial Communications Corp. (Centennial), pp. 13-15; Rural Carrier Group, pp. 3-6; AT&T Wireless Services, Inc. (AWS), pp. 1-4; Wireless Division of the Wisconsin State Telecommunications Association, p. 1; Nextel Partners, Inc., pp. 20-28; Nextel Communications, Inc., pp. 5-10; Rural Cellular Association and the Alliance of Rural CMRS Carriers (RCA-ARC), pp. 23-28; United States Cellular Corporation (USCC), pp. 43-48; Sprint, pp. 18-20; CTIA-The Wireless Association (CTIA), pp. 14-21; Dobson Cellular Systems, Inc. (Dobson Cellular), pp. 18-24; Western Wireless Corporation (Western Wireless), pp. 18-19.

[4] Nebraska Companies, p. 16.

[5] *See, for example*, TDS Telecom, p. 24; CenturyTel, p. 19; Nebraska Companies, p. 20; Western Alliance, pp. 19-20, 29; Dobson Cellular, p. 23.

To counter the fact that a primary line limitation would have a deleterious effect on network investment, NASUCA asserts that "encouraging investment in rural areas is not the primary purpose of the federal high-cost fund. That purpose is for consumers in rural areas to have access to the supported services…."[6] Even if NASUCA were correct that the Commission is somehow limited to adopting rules which do no more than provide access to supported services, the unequivocal evidence from history, technology, and economics is that in capital intensive industries, without continuous investment, even the most basic service will deteriorate over time. Not only does plant wear out and customer locations change, but because the rest of the industry is rapidly evolving, if rural carriers fail to keep pace with technology, their subscribers will eventually be unable to interact with the rest of the world. In addition, governmental mandates to modify communications networks regularly arise; for example, enhanced 911 (E911), local number portability (LNP), and the Communications Assistance for Law Enforcement Act (CALEA).

Without debating whether any of the purposes of high-cost support takes precedence over any other, the Act plainly states that the Joint Board and Commission *shall* base universal service policies on seven principles, which include the availability of "quality services," access to "advanced services," and "reasonably comparable" services.[7] Also, the Commission has previously recognized that its universal service policies should not create barriers to the provision of access to advanced services.[8]

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[6] National Association of State Utility Consumer Advocates (NASUCA), p. 15.
[7] 47 U.S.C. §§254(b)(1) – (3).
[8] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11322, ¶199 (2001) (Rural Task Force Order).

NASUCA fails to acknowledge Section 254(e) of the Act, which requires that high-cost universal service support be used "only for the provision, *maintenance and upgrading of facilities* and services for which the support is intended" (emphasis added). This indicates that high-cost support is intended to be used, in part, for investment in infrastructure. Indeed, the FCC has previously concluded that the purpose of high-cost loop support is "to maintain existing facilities and make prudent facility upgrades…"[9]

Without continued investment in the network, consumers will no longer have access to telecommunications and information services, including advanced services, that are reasonably comparable to those services offered in urban areas, as called for in Section 254(b)(3). Moreover, as rural carriers lose primary line support, there would be significant upward pressure on end-user rates, in many instances causing them to no longer be affordable and/or reasonably comparable to the rates offered in urban areas. Thus, a primary line limitation, which results in highly unstable support payments, discourages investment in infrastructure, and produces rates and services that are not reasonably comparable to those offered in urban areas, also clearly fails to meet the Act's call for support that is predictable and sufficient.[10] In short, it is inconceivable that the Commission could adopt a universal service policy which did not include encouragement of investment in rural areas among its objectives.

The Associations note that from a rural LEC perspective, limiting high-cost support to primary lines will severely impact cost recovery. Most rural ILECs operate under rate-of-return regulation in the interstate jurisdiction. As such they are required to set their interstate rates at no more than levels which provide them the opportunity to

[9] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8339, ¶300 (1997).
[10] 47 U.S.C. §254(b)(5).

recover their costs allocated to the interstate jurisdiction, including the prescribed return on their interstate allocated investment. To determine their interstate allocated costs and investments, carriers first apply the Commission's Part 64 rules to remove their non-regulated items, then apply the Part 36 separations rules to allocate investment and expense to the interstate jurisdiction. What is not allocated to the interstate jurisdiction, is allocated to the state jurisdiction. Part 36 includes the high-cost loop universal service support calculation methodology which results in an additional "interstate expense allocation" for carriers with qualifying costs, which is "added to interstate expenses and deducted from state expenses…"[11]

As Beacon's comments point out, if a primary line limitation on support were adopted, rural ILECs would be unable to fully recover their interstate allocated expenses because their recovery from the USF would be reduced for every line not designated as "primary."[12] The Commission's rules provide only three sources for ILECs' recovery of interstate costs: subscriber line charges (SLCs), access charges, and universal service support. Since virtually all rural ILECs are already assessing residential SLCs at the capped amount, a reduction in high-cost support could only be recovered through an increase in access charges, but every indication is that the Commission intends to move access charges in the other direction. The only alternative then to confiscation of the rural ILEC's property is to request a recommendation from a separations Joint Board to revise the Part 36 rules to transfer interstate allocated expenses to the state jurisdiction whenever a subscriber fails to designate the ILEC as their primary line provider.

[11] 47 C.F.R. §36.601(a).
[12] Beacon, p. 6.

Commenters also note the particularly adverse impact a primary line limitation would have on small businesses in rural areas which, in turn, would jeopardize rural economic development. Increased rates for non-primary lines would place small rural businesses at an even greater competitive disadvantage with larger businesses located in urban areas.[13] And, if the rates for non-primary lines in rural areas increase significantly, it "will result in unnecessary and unacceptable risks of business relocations, service and payroll reductions, job losses, and other adverse impacts that can destroy years of economic development efforts within a rural community."[14]

More than any other concern surrounding a primary line limitation on support, the issue raised most often by commenters is the administrative complexities of implementation, which would be costly and onerous -- if not impossible -- to overcome.[15] Of all the commenters raising administrative concerns, perhaps none is more credible than the Universal Service Administrative Company (USAC), the neutral administrator of the universal service support mechanisms. For page after page, USAC raises difficult questions and concerns ranging from the definition of "primary line," data collection issues, USAC resource issues, FCC quarterly filing and disbursement issues, and transition and implementation issues. USAC's comments suggest that the potential for waste, fraud, and abuse under a primary line policy would be great, and the costs to prevent it significant.

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[13] *See, for example,* NECA, p. 8; Western Alliance, p. 22; BellSouth, p. 8; Rural Carrier Group, pp. 5-6; TDS Telecom, p. 21.

[14] Western Alliance, p. 23. *See also*, USTA, p. 18; SDTA/Townes, p. 6; Coalition of State Associations, p. 14.

[15] *See, for example,* NECA, pp. 9-17; RCA, pp. 7-8; TCA, p. 12; BellSouth, pp. 10-11; Nebraska Companies, pp. 17-19; Western Alliance, pp. 31-34; USTA, pp. 19-21; ITTA, pp. 12-13; TDS Telecom, pp. 19-23; FW&A, pp. 40-42; Mid-Sized Carrier Coalition, pp. 21-24; ATA, pp. 9-10; TCA, p. 12; Oregon Commission, p. 7; Sprint, pp. 18-20; CTIA, pp. 18-21; Centennial, pp. 13-14; RCA-ARC, p. 24; Nextel Partners, pp. 27-28; Dobson Cellular, pp. 20-21; AWS, pp. 2-3.

Notably, none of the handful of commenters advocating a primary line limitation provide any type of substantive explanation on how all of the administrative issues surrounding such a policy are to be overcome. NASUCA and GCI perhaps naively suggest that because the Lifeline program supports only primary lines without undue administrative burdens, this indicates that a primary line limitation on high-cost support could also be implemented without undue difficulty.[16] However, a primary line limitation on high-cost support "is far more complex because of the volume of customers involved – all customers – rather than a small group of Lifeline participants, and because of the complexity of multiple carriers serving an individual."[17]

The Joint Board conditioned its recommendation for a primary line policy on the Commission's ability to develop competitively neutral rules and procedures that do not create undue administrative burdens.[18] Based on the voluminous record gathered on this issue, it is clear that this is not achievable. For that reason alone, the Commission should reject limiting support to primary connections, and seek other ways -- such as the Associations' interim plan -- to sustain the High-Cost program that are consistent with the principles of Section 254.

### B. A cap on per-line support upon competitive entry would be antithetical to the objectives of universal service

Some wireless carriers and their representatives, while opposing a primary line limitation, still advocate capping per-line support upon competitive entry as a way to control the growth of the fund.[19] This proposal defeats the very purpose of high-cost

[16] NASUCA, p. 27; GCI, p. 28.
[17] JSI, pp. 9-10.
[18] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4292, ¶81 (2004) (Portability Recommended Decision).
[19] *See,* CTIA, pp. 22-23; Sprint, pp. 8-10; AWS, p. 5; Dobson, p. 28; Western Wireless, p. 18.

support, the same way as a primary line limitation would.[20] Specifically, a cap on per-line support would have an acutely negative impact on a rural carrier's future investment in infrastructure, and fails to account for extraordinary maintenance and external cost increases.

As JSI explains, a per-line cap upon competitive entry would "create uncertainty for future infrastructure projects because uncapped rural telephone companies will not know, when they start a multi-year infrastructure project that is supported by the fund, whether the CETC cap will become effective and thus forestall their planned investment recovery plan."[21] Indeed, under a per-line cap, "additional investments will not be made until some or all of the existing investments were fully depreciated..."[22] Even Dobson Cellular, who proposes a per-line cap as a temporary measure, acknowledges that "it does not support the building, maintenance and upgrades to entire networks in rural markets."[23]

A cap on per-line support also constrains a rural carrier's ability to pay for the maintenance or restoration of facilities following a natural disaster or other emergency, such as an ice storm, hurricane, earthquake, or flood.[24] Furthermore, external cost increases, such as labor costs, workman's compensation, and health insurance often rise faster than the rate of inflation and thus would "require offsetting cost reductions in other

[20] In addition, a few wireless carriers recommend allocating capped per-line support among ETCs based on market share. Sprint, p. 9; AWS, p. 5; Dobson Cellular, p. 28. This proposal, in addition to the general deficiencies of a per-line cap, is not competitively neutral. Because wireless phones are typically carried on one's person, a household may have numerous mobile phones. In contrast, wireline phones typically serve all the members of a household, so the average household will only have one or two wireline connections. Thus, dividing support for a service area based on market share (which presumably means the number of connections) would unfairly enrich wireless carriers at the expense of LECs, and provide them with an even greater windfall than they currently receive under the "identical support" rule.
[21] JSI, p. 11.
[22] Western Alliance, p. 37.
[23] Dobson Cellular, p. 28.
[24] *See*, Western Alliance, p. 37; ATA, p. 8.

areas (such as infrastructure investment and jobs) or increases in local service rates or access charge revenues."[25]

Finally, there would be administrative complexity with capping per-line support upon competitive entry. As USAC explains: "Capping support for a subset of rural ILECs (*i.e.* those with competition) would mean that that subset would be subject to a different set of calculations. USAC believes that this approach would add another layer of complexity to the high cost support calculation."[26]

The Commission previously declined to impose a cap on per-line support in areas with CETCs, finding that "freezing support in competitive study areas may have the unintended consequence of discouraging investment in rural infrastructure…"[27] This assessment continues to hold true today. The FCC should therefore reject calls to cap per-line support upon competitive entry as means to control the growth of the fund, as it is inconsistent with the purposes of universal service.

### C. Adoption of the Associations' interim plan would control the future growth of the fund in a manner that directly addresses the causes of the fund's escalation and is consistent with the objectives of universal service

The Associations share the concern of the Joint Board and the few commenters advocating a primary line limitation and cap on per-line support regarding the growth of the High-Cost program and its continued sustainability. However, implementing a primary line limitation and/or cap on per-line support are not viable solutions as both are measures that would defeat the fundamental objectives of universal service. First and foremost, the FCC must ensure that the measures it implements to sustain the High-Cost program do not inadvertently defeat its fundamental objectives. Furthermore, the

[25] Western Alliance, p. 37. *See also,* ATA, pp. 8-9.
[26] USAC, p. 18.
[27] Rural Task Force Order, 16 FCC Rcd 11296, ¶129.

measures the Commission ultimately adopts to control the future growth of the fund should directly address the root causes of that growth.

In its Recommended Decision, the Joint Board states that "[m]uch of this growth [in high-cost support] represents supported wireless connections that supplement, rather than replace, wireline service. Our examination of the record reveals a potential for uncontrolled growth as more and more competitive ETCs are designated in rural and high-cost areas."[28] The Joint Board also acknowledges that under a primary line limitation on support, if too many ETCs were designated in an area, it could result in situations where no carrier serving that area has sufficient funding to provide universal service.[29] Later in its recommendation, the Joint Board states that "[f]or areas served by rural carriers, we are concerned that funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support."[30] The Associations agree completely with all of these statements.

Therefore, instead of adopting a primary line limitation, which skirts the real issues that the Joint Board outlined, the Commission should address the problems facing the fund head-on and in a manner that promotes universal service rather than defeating it. This can be accomplished through standardized minimum guidelines for reviewing ETC applications in rural service areas, and by beginning the process of basing support on each ETC's own costs rather than on the rural ILEC's costs. Other commenters agree.[31] For instance, Western Alliance states:

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[28] Portability Recommended Decision, 19 FCC Rcd 4285, ¶67.
[29] *Id.*, 19 FCC Rcd 4274, ¶43.
[30] *Id.*, 19 FCC Rcd 4297, ¶96.
[31] *See, for example,* Coalition of State Associations, pp. 4-13, 17-18; NTCA, pp. 13-24; Mid-Sized Carrier Coalition, pp. 4-20; FW&A, pp. 11-32; SDTA/Townes, pp. 2-4, 8-10; OIU/HTC, pp. 5-6.

> The adoption and enforcement of more stringent ETC designation standards offers a much more effective, and less disruptive means of limiting long-term USF growth. In addition, the Joint Board and Commission need to eliminate the ability of some CETC's to obtain windfall portable universal service support based upon the per-line costs and support of rural ILECs.[32]

As discussed in its initial comments, the Associations' interim plan would do both of these things to control the future growth of the fund. The plan provides stringent but fair minimum guidelines for state commissions and the FCC to use when they consider applications for ETC designation in rural service areas. These guidelines would control the number of CETCs in rural service areas by ensuring that designated carriers were truly capable and committed to providing high-quality universal service throughout the entire designated area. The guidelines would also discourage a mentality on the part of regulators that financially supported competition is always in the public interest in rural service areas.

In addition, the Associations' plan would adopt a tiered series of ratios that would provide wireless CETCs with a safe harbor percentage of the ILEC's per-line support. This would begin to recognize that equal per-line support for carriers with significantly different costs, incentives, and responsibilities is not competitively neutral and is needlessly inflating the size of the fund.

Thus, the Associations' plan would address the actual causes for the significant growth in the high-cost fund. Moreover, unlike a primary line limitation and cap on per-line support, it would do so in a way that ensures that funding is predictable and

[32] Western Alliance, p. 20. *See also,* Mid-Sized Carrier Coalition, pp. 2-3 ("Specifically, providing a mandatory rigorous and structured ETC designation and oversight process coupled with shifting the basis of competitive carriers' support to their owns costs serve as targeted means to accomplish the Commission's stated twin objectives in this proceeding: (1) to send accurate competitive entry signals to potential competitors; and (2) to control unreasonable future growth of the universal service fund.").

sufficient for all ETCs and that the universal service objectives of the 1996 Act continue to be met. The FCC should therefore adopt the Associations' plan without delay.

### D. Adoption of the Associations' plan as an interim measure is consistent with the goal of cost-based support

In its November 8, 2002 Referral Order to the Joint Board, the FCC asked the Joint Board to review the methodology for calculating support for ETCs in competitive study areas.[33] In so doing, the Commission noted the arguments that basing an ETC's support on the ILEC's embedded costs creates a windfall for CETCs with lower costs.[34] In consideration of this issue, the Joint Board expressed concern that "funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support," but ultimately decided that it did not have an adequate record to recommend a change in the basis for support.[35] Instead, the Joint Board recommended that it be asked to consider the basis of support for all ETCs within the broader context of its comprehensive review of support mechanisms for both rural and non-rural carriers.[36]

The Associations, along with a number of other commenters, agree that the present system is economically irrational and point out that it directly conflicts with the requirements of the Act.[37] The Associations do not agree, however, that the record is insufficient to begin a transition to an economically rational and legal system in which

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[33] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, 22645, ¶7 (2002).
[34] *Id*.
[35] Portability Recommended Decision, 19 FCC Rcd 4297, ¶96.
[36] *Id.,* 19 FCC Rcd 4296-4298, ¶¶94-97.
[37] *See,* footnotes 29 and 30, *supra.*

there is a causal connection between the support received by each carrier and the need for that support to accomplish the objectives of the Act.[38]

The Associations' plan for a tiered set of safe harbor percentages to be applied to ILEC per-line support levels would begin the transition to cost-based support for wireless ETCs on the basis of publicly available investment data. The results of the investment comparison are consistent with the observation in many ETC proceedings that lower wireless costs are a reflection of the different service standards and coverage areas traditionally utilized by the two industries.[39]

While the proposed support levels for wireless CETCs are based on national cost averages, as an interim measure with an expected life of one and a half to two years it is well within the Commission's discretion to adopt, especially because it is only a safe harbor rule. The Associations' plan specifically provides that any ETC for which the safe harbor provides inadequate support may submit a cost study demonstrating its need for additional funding. Although the cost study would be performed in a manner that approximates the results obtained under the existing accounting and cost allocation rules used by ILECs, because the study would be optional, there is no need to revise the applicability of those rules to cover ETCs not now subject to them.

While the "identical support" rule was theoretically problematic when the Commission adopted it in 1997, it has now become a real demonstrable failure for the past several years. The Commission should reject the notion that the mismatch of

[38] Indeed, three Joint Board members agreed that there was a sufficient record to recommend a policy goal that the amount of universal service support paid to competitive providers should not be based on the incumbent's costs. *See,* Portability Recommended Decision, Joint Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission Approving in Part, Dissenting in Part, 19 FCC Rcd 4324.

[39] Thus, the lower investment cost for wireless carriers relied on in the Associations' plan says nothing about the comparative efficiencies of the two technologies, because there is no "apples to apples" comparison.

support and need will not become much worse over the next few years, and instead adopt the Associations' interim plan which at least begins a movement toward rationality.

## III. COMMENTERS SUPPORT THE ADOPTION OF STANDARDIZED MINIMUM GUIDELINES FOR ETC APPLICATIONS IN RURAL SERVICE AREAS

The majority of commenters support the adoption of standardized minimum guidelines for state commissions and the FCC to use when considering ETC applications in rural service areas.[40] Standardized minimum guidelines are essential since Congress did not presume that supported competition would serve the public interest in all areas served by rural telephone companies. As the Joint Board correctly states, "[s]ection 214(e)(2) requires states to undertake a fact-intensive analysis to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act in the affected area."[41]

Guidelines would establish minimum qualifications for ETC applicants and aid regulators in conducting a proper public interest test in rural service areas. Also, a standardized set of minimum qualifications to be used by both state commissions and the FCC would allow for a more predictable application process nationwide.[42] Even state commissions themselves "support[] the review and adoption of federal guidelines that provide additional direction to states when considering ETC designation requests."[43]

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[40] *See,* NECA, pp. 18-20; ATA, pp. 2-6; OIU/HTC, pp. 2-5; TDS Telecom, pp. 4-18; Beacon, p. 3; FW&A, pp. 12-32, USTA, pp. 5-15, SDTA/Townes, pp. 8-10; NTCA, pp. 15-24; JSI, pp. 3-6; Western Alliance, pp. 8-19; Mid-Sized Carrier Coalition, pp. 4-15; MITS, pp. 4-8; TCA, pp. 2-11; Nebraska Companies, pp. 2-13; GVNW, pp. 11-13; CC Communications, pp. 3-6; BellSouth, pp. 3-7; Coalition of State Associations, pp. 4-13; RCA, p. 3; ITTA, pp. 17-29; CenturyTel, pp. 7-15; NASUCA, pp. 33-46; Public Service Commission of the State of Missouri (MoPSC), pp. 1-2; SBC Communications Inc. (SBC), pp. 3-9; New York State Department of Public Service (NYDPS), p. 2; People of the State of California and the Public Utilities Commission of the State of California (CPUC), pp. 4-5.

[41] Portability Recommended Decision, 19 FCC Rcd 4262, ¶12.

[42] *See, Id.*, 19 FCC Rcd 4261, 4262, ¶¶ 9, 13.

[43] MoPSC, pp. 1-2.

A small group of wireless carriers and their representatives generally argue against minimum ETC eligibility criteria and other guidelines.[44] Minimum eligibility requirements are necessary, however, to ensure that carriers designated as ETCs are qualified to take on the obligations of being a carrier of last resort. It has been said many times during the course of this proceeding, but it bears repeating: Seeking ETC designation is a choice, not a requirement, and with the benefit of receiving public funds must come certain obligations and expectations that are not imposed on non-ETCs. Only through strong minimum eligibility requirements can there be some assurance that the funds expended on additional ETCs in high-cost rural service areas will actually serve the public interest.

Some commenters recommend that if the Commission adopts guidelines, that they do not exceed those used by the FCC in its Virginia Cellular and Highland Cellular ETC designation orders.[45] However, the Commission clearly stated in those orders that the criteria it used were not meant to prejudge the Joint Board's deliberations and that the Commission may ultimately adopt a different framework for the public interest analysis of ETC applications.[46]

As part of its plan, the Associations recommend the adoption of seven standardized minimum guidelines for state commissions and the FCC to use when

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[44] *See, for example,* RCA-ARC, pp. 30-41; Nextel Partners, pp. 12-20; Nextel Communications, pp. 16-19; Western Wireless, pp. 19-20; USCC, pp. 2-13; AWS, pp. 4-5.

[45] *See, for example,* Nextel Communications, pp. 16-19; Western Wireless, pp. 19-20; AWS, pp. 4-5; CTIA, pp. 9-10.

[46] *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia,* CC Docket No. 96-45, Memorandum and Order, 19 FCC Rcd 1563, 1576, ¶28 (2004) (Virginia Cellular); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum and Order, 19 FCC Rcd 6422, 6432, ¶22 (2004) (Highland Cellular).

reviewing ETC applications for rural service areas. Using these guidelines as a template would assist state commissions and the FCC in determining whether or not the public interest would be served by a particular carrier's designation as an ETC. They would also be helpful in addressing the concern regarding the long-term sustainability of the fund, by ensuring that "the generalized benefits of competition"[47] are no longer the sole criteria upon which ETC applications are judged in rural service areas.

While the Associations do not wish to rehash the merits of all of its proposed guidelines, there are two which require further discussion in response to comments made in the record.

### A. It is imperative that state commissions and the FCC consider the long-term impact that ETC designations in high-cost rural service areas will have on the fund

Several commenters argue that the level of per-line support to be received by a CETC should not be a consideration by regulators when reviewing ETC applications.[48] In particular, RCA-ARC and USCC argue that it does not matter how many ETCs are designated in high-cost areas since there are only a small number of potential lines that can be "captured."[49] In addition, GCI argues that consumer benefits will likely result from competitive entry when an additional ETC is designated.[50] These arguments are flawed because they rest on faulty premises.

In rural areas, consumers are not dropping their subscriptions to wireline service and replacing it with wireless service. Rather, support is going largely to connections that *complement* a customer's wireline service, not connections actually "captured" by

[47] Portability Recommended Decision, 19 FCC Rcd 4262, ¶12.
[48] *See,* RCA-ARC, pp. 19-20; USCC, pp. 39-40; GCI, pp. 9-11; Dobson Cellular, p. 14; CTIA, pp. 12-13; Sprint, pp. 33-34.
[49] RCA-ARC, p. 19; USCC, p. 39.
[50] GCI, p. 9.

the competitor from the ILEC. Thus, when a wireless carrier is designated as an ETC, it is not a "zero sum game" as RCA-ARC and USCC imply.

As for GCI's argument that consumer benefits will likely result from competitive entry when an additional ETC is designated, this assumes that the competitive carrier does not provide any service in the area and will only begin to do so if they are designated. For wireless carriers, this is simply not the case. Most large wireless carriers already have a substantial presence in the service areas in which they are seeking ETC status, at least along the major highways and in the more populated regions. Tier IV wireless carriers, on the other hand, are more consistently serving rural and remote areas better than the larger wireless carriers. Universal service support is used by Tier IV carriers to improve service area coverage and upgrade analog and time division multiple access (TDMA) wireless networks to the next generation and beyond.

Wireless carriers have roaming agreements in place to utilize other wireless networks when their own service is not directly available to their customers. Roaming rates have been significantly reduced to make it more efficient to utilize the network of another wireless carrier, especially in rural areas. As a result, wireless competition exists in rural areas and is not likely to increase if ETC designation is given to all wireless carriers in a rural service area. While coverage may improve, introducing additional competition is not likely to occur.

Once a wireless carrier receives ETC status, they will receive support for all of their existing customers in the service area – customers for whom no support was required to begin with. Furthermore, once one wireless carrier is designated as an ETC, it is likely that the other wireless carriers offering service to the area will follow suit in

order to retain a competitive edge. And, it is logical to assume that the larger the amount of per-line support that is available, the more likely carriers will seek ETC designation in that area, especially once one CETC has been designated.

The Associations' interim plan will drastically curb this problem. Currently, approximately 85 percent of all high-cost funding received annually by wireless CETCs is being received by Tier I, Tier II, and Tier III wireless carriers.[51] The Associations' plan provides Tier IV carriers with a higher percentage of the ILEC's per-line support than the percentage of the ILEC's support allotted to Tier I, II, and III carriers. However, even with this higher percentage of the ILEC's support, the overall support received by Tier IV carriers has a nominal aggregate impact on the High-Cost program.

Tier IV carriers, which receive 80 percent of the per-line support available to ILECs pursuant to the Associations' plan, consist of roughly 150 carriers nationwide. The vast majority of these Tier IV carriers serve less than 10,000 customers. Tier IV carriers currently receive about 1.7 percent of the overall High-Cost program. Under the Associations' proposal, this nominal percentage will be further reduced to approximately 1.4 percent.[52] More importantly, the tiered support proposal would reduce the total size of the High-Cost program by approximately $303 million per year.[53]

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[51] Based on USAC's fund size projections for third quarter 2004, Tier I wireless carriers will receive approximately $32.8 million on an annualized basis, or 7.8 percent of all high-cost funding received annually by wireless ETCs. Tier II wireless carriers will receive $317.6 million on an annualized basis, or 75.8 percent of all high-cost funding received annually by wireless ETCs. Tier III wireless carriers will receive $62.4 million on an annualized basis, or 1.4 percent of all high-cost funding received annually by wireless ETCs.

[52] Even assuming that almost all of the roughly 150 Tier IV carriers were to obtain ETC status, the Associations estimate that this would only increase the size of the High-Cost program by $40 million per year. Such an impact would represent just over 1 percent of the total High-Cost program and would be allocated to "rural only" wireless carriers who cannot utilize large urban customer bases to internally subsidize their wireless operations.

[53] In its initial comments, the Associations' mistakenly stated that Tier IV carriers currently receive 0.42 percent of the overall High-Cost program. The correct figure is 1.7 percent as stated above. Due to this

Therefore, the Associations agree with all those commenters who support the adoption of a guideline that would encourage state regulators and the FCC to consider the impact that a CETC designation in a rural service area would have on the High-Cost program.[54] Moreover, by implementing the proposed tiered safe harbor ratios for wireless carriers, the support received by wireless CETCs will more closely reflect their cost of providing service and the impact of future CETC designations on the High-Cost program will be less problematic.

### B. Disaggregation of support does not adequately address creamskimming concerns under the identical support rule and the FCC should maintain its current service area redefinition rules, consistent with the Joint Board's recommendation

A handful of commenters argue that in order to facilitate entry into high-cost areas by CETCs, rural ILECs should be required to disaggregate their support and their service areas should automatically be redefined.[55] These commenters contend that most rural ILECs have chosen not to disaggregate their support as a "shield" against competitive entry. Requiring rural ILECs to disaggregate their support and automatically redefining their service areas, they say, will address all concerns of creamskimming. This is simply not the case and is demonstrative of the fact that the commenters lack a fundamental understanding of the creamskimming issue.

The disaggregation of support is not a cure-all for creamskimming, particularly with respect to wireless ETCs. Most rural ILEC's elected Path 1 (no disaggregation), not as a way to prevent additional ETC designations, but because of the inherent problems of

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error, the Associations also underestimated the reduction in the High-Cost program as a result of its proposal at $269 million. The correct figure is $303 million, as stated above.

[54] *See,* Coalition of State Associations, p. 12; NTCA, pp. 21-24; SDTA/Townes, p. 9; MITS, p. 7; CenturyTel, p. 12; TCA, pp. 9-10; TDS Telecom, p. 10.

[55] *See,* RCA-ARC, pp. 20-23; USCC, pp. 40-43; Dobson Cellular, pp. 15-17; Centennial, pp. 15-17; GCI, pp. 22-25.

providing all CETCs with the ILEC's identical per-line support. For example, due to the entirely different network architectures of ILECs and wireless carriers, a customer that is extremely high-cost for an ILEC because of its great distance from the central office, could be a low-cost customer for a wireless service provider, if that customer is near a highway where a cell tower has been erected. In that situation, if the ILEC had disaggregated its support based on its own relative costs, it would have presented an even greater windfall and arbitrage opportunity for a wireless CETC than if its per-line support remained averaged over the entire study area. The FCC has already recognized that disaggregation may not be a viable alternative for reducing creamskimming "where the cost characteristics of the incumbent and competitor differ substantially."[56]

In addition, the Associations agree with USTA and TDS Telecom that merely because a rural ILEC has chosen to disaggregate its high-cost funding does not by itself support a finding that a redefinition of a rural service area is in the public interest.[57] The Joint Board acknowledged in its recommendation that disaggregation may not address all concerns regarding creamskimming.[58] Also, the Commission has recognized that creamskimming still may be a concern where a competitor proposes to serve only the low-cost, highest-density wire centers in a study area with widely disparate population densities.[59] Accordingly, forced disaggregation will not solve the creamskimming problem and provides yet another reason why the FCC should adopt the Associations' interim plan, which would begin the transition toward basing CETCs' support on their own costs.

[56] Highland Cellular, 19 FCC Rcd 6437, ¶32.
[57] USTA, pp. 13-14; TDS Telecom, p. 12.
[58] Portability Recommended Decision, 19 FCC Rcd 4279, ¶54.
[59] Virginia Cellular, 19 FCC Rcd 1579-1580, ¶35; Highland Cellular, 19 FCC Rcd 6437-6438, ¶32.

Some commenters complain of the FCC's "glacial" pace in acting on petitions for service area redefinitions,[60] and suggest that these redefinitions should either be "routine" or "automatic."[61] However, these commenters refuse to acknowledge Section 214(e)(5) of the Act, which establishes a presumption that a rural telephone company's entire study area is the area that a competitor must agree to serve before it can become eligible for high-cost support. In 1997, the FCC established procedures for redefinition of rural service areas, but which rightfully maintained the study area presumption.[62] Under the FCC's rules, if the Commission does not act on a state's petition to redefine a rural telephone company service area within 90 days of issuing a Public Notice, it is deemed approved.[63] The Joint Board continues to endorse the FCC's procedures.[64] Therefore, the Commission should retain its existing rules as they provide the FCC with the necessary discretion to analyze the potentially harmful impacts of a rural service area redefinition, consistent with the Act.

The Associations do, however, encourage the Commission to strive to make decisions on petitions for service area redefinitions more expeditiously, so long as it does not do so at the expense of a thoughtful and thorough public interest analysis. Regulatory uncertainty is the enemy of all service providers. Allowing service area redefinition proceedings to remain open unnecessarily for long periods of time is not conducive to business planning for all involved – both the requesting competitive carrier and the ILEC.

[60] *See,* RCA-ARC, p. 22; USCC, p. 42.
[61] *See,* Dobson Cellular, p. 17; Centennial, p. 16.
[62] 47 C.F.R. §54.207(b).
[63] 47 C.F.R. §54.207(c)(3)(ii).
[64] Portability Recommended Decision, 19 FCC Rcd 4279, ¶55.

## IV. CONCLUSION

The Commission should swiftly adopt the Associations' interim plan to control the growth of the High-Cost universal service program while it considers more long-term reforms to the basis of support for all ETCs in rural service areas. Commenters in this proceeding have convincingly demonstrated that the Joint Board's recommendation for a primary line limitation and/or cap on per-line support does not comport with Congress's universal service principles and would be costly and onerous to implement. The Associations' plan, on the other hand, with its tiered safe harbor ratios for determining wireless CETC support and strong minimum guidelines for ETC applications in rural service areas, would address the real causes of the fund's growth, while continuing to provide predictable and sufficient support for all ETCs. In so doing, it would ensure that rural consumers continue to have access to high quality telecommunications and information services, including advanced services, that are reasonably comparable to those available in urban areas and at reasonably comparable rates. Furthermore, the Associations' interim plan would be a good first step toward an economically rational system of support for CETCs. The FCC should therefore adopt the Associations' interim plan without delay.

Respectfully submitted,

**THE RURAL TELECOMMUNICATIONS ASSOCIATIONS**

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September 20, 2004

## ATTACHMENT A

**The Rural Telecommunications Associations'[1] Plan**: An interim universal service mechanism for wireless and wireline competitive eligible telecommunications carriers (CETCs) that would serve the public interest.

1. In order for a wireless carrier to be designated as an eligible telecommunications carrier (ETC) in an area served by a rural telephone company, the appropriate regulatory authority would be required to determine whether such designation would be in the public interest. Regulators would be expected to weigh the following factors when determining whether the public interest would be served:[2]

- Whether or not the applicant has the adequate financial resources in order to provide quality services throughout the ETC designated service area.
- The applicant's commitment and ability to provide the supported services throughout the ETC designated service area to all customers who make a reasonable request for service. This should include the submission of a formal build-out plan (which may be filed confidentially) for areas where facilities have not yet been built at the time the application is submitted. Additionally, regulators may require CETCs to explore the possibility of serving requesting customers for which the CETC has not yet extended its own network through resale of another carrier's service.
- The applicant's ability to remain functional in emergency situations.
- The applicant's commitment to utilize the high-cost funding it receives only to support infrastructure within the ETC designated service area.
- The impact of the designation on the Universal Service Fund (USF). For instance, regulators may also consider the overall level of per-line support provided to a specific service area.
- The commitments made by the applicant regarding quality of telephone service.
- Whether or not such a designation would create the potential for rural creamskimming by allowing the applicant to serve only the low-cost, high revenue customers in a rural telephone company's service area.
- Regulators may choose to impose consumer protection requirements as a precondition for designation as a CETC provided that for wireless carriers such regulations do not violate Section 332(c)(3) of the Communications Act.

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[1] The Rural Telecommunications Associations consist of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Rural Independent Competitive Alliance (RICA), and the Rural Telecommunications Group (RTG).

[2] These criteria are based collectively on the guidance provided in the Joint Board's Portability Recommended Decision, and also the FCC's Virginia Cellular and Highland Cellular ETC Designation Orders. *See, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004).

2. Once it has been determined that the designation of a given wireless carrier as a CETC would be in the public interest, it must be determined what level of USF support the CETC should be eligible to receive. It is imperative that the level of support received by all carriers – whether incumbent or competitive – has a reasonable relationship to the carrier's actual costs of providing the supported services throughout a given service area. Incumbent local exchange carrier (ILEC) support is already directly linked to the carrier's actual costs, as incumbents are required to either perform cost studies or have their support based on formulas that are derived from similarly situated carriers' actual costs (the average schedule methodology). At present, all CETCs receive the same per-line support as the incumbent, regardless of whether or not their actual costs bear any relationship to the ILEC's costs.

   The costs for a wireless carrier to provide service over a given area are generally lower than the costs for an ILEC to provide service in the same area. Therefore, rather than wireless CETCs receiving the same level of per-line support as the ILEC in a particular study area, this proposal would permit these carriers to receive a percentage of the total per-line support received by the incumbent.

   Readily available industry data supports the presumption that wireless carriers' costs are lower than ILECs' costs. This is based upon ILEC and wireless networks as they currently exist. Large wireless carrier networks typically do not cover many sparsely populated and costly rural areas. In addition, wireless carriers provide a different level and quality of service, do not have carrier of last resort obligations, and generally operate with minimal regulatory oversight.

   Data from a November 2003 National Exchange Carrier Association (NECA) report to the FCC indicates that the national average capital investment per loop for all ILECs was **$2,345**.[3] In comparison, according to the year-end 2003 survey conducted by the Cellular Telecommunications & Internet Association (CTIA), the national average capital investment per reported subscriber for all wireless carriers was **$955**.[4] These figures indicate that, for every $100 invested in infrastructure by ILECs, wireless carriers invest approximately $40.

3. It is also important to consider the relative size of the wireless carrier that would be eligible to receive USF support. Small, rural carriers – wireline and wireless alike – do not benefit from economies of scale as do large carriers. For instance, rural carriers have a much smaller base of customers, and thus a more limited ability to spread their operating costs. At present, the process for determining the level of USF support available to the Regional Bell Operating Companies (RBOCs) and other non-

[3] National Exchange Carrier Association, *Universal Service Fund Data: NECA Study Results, 2002 Report* (submitted Nov. 3, 2003).

[4] Dr. Robert F. Roche, Pramesh Jobanputra, Luis A. Rodriguez, *CTIA's Wireless Industry Indices, Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2003 Results* (rel. May 2004), p. 157.

rural carriers recognizes this fact. As a result, the non-rural carriers receive a greatly reduced level of high-cost universal service support, as compared to rural ILECs. Therefore, it is crucial that any process for determining USF support levels for wireless CETCs also acknowledges their relative size, and thus their need for support.

4. Consequently, this plan advocates the creation of a tiered series of ratios for determining wireless CETC support. Wireless carriers seeking ETC designation would be placed into one of four tiers, based on the size of the carrier. The first three tiers would be similar to those established by the Commission in its rules on the deployment of enhanced 911 (E911) capabilities.[5] A fourth tier would be added to represent the smallest rural wireless carriers.

   These tiers are as follows:

   **Tier I Wireless Carriers** – CMRS carriers with national footprints.[6]

   **Tier II Wireless Carriers** – Carriers that have over 500,000 subscribers, but do not possess a national footprint.[7]

   **Tier III Wireless Carriers** – Carriers that have between 100,001 and 500,000 subscribers.

   **Tier IV Wireless Carriers** – Carriers that have 100,000 or fewer subscribers.

   ***Note:*** In cases where a small wireless carrier has partnered with a larger wireless carrier, if the small carrier has the controlling ownership interest in the spectrum, it would be considered a stand-alone entity, and the appropriate tier would apply. If the larger carrier has the controlling ownership interest in the spectrum, the small wireless carrier would not be considered a stand-alone entity, and the tier of the controlling carrier would apply.

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[5] The FCC created three tiers to tailor its E911 deployment deadlines to the unique capabilities of various-sized wireless carriers. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Rural Nationwide CMRS* Carriers, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14847-14848, ¶¶ 22-23 (2002). The Commission recognized that larger wireless carriers had the capability to become compliant more rapidly than small or mid-sized carriers "because of their size and geographic scope." *Ibid.*, 17 FCC Rcd 14843-14844, ¶¶ 8-11. As part of the E911 proceeding, the Rural Telecommunications Group advocated the inclusion of a fourth tier to represent small, rural wireless carriers. While the Commission did not adopt a fourth tier for E911 deployment, it is included in this proposal, since universal service policy has traditionally recognized the higher costs of small and rural carriers.

[6] These carriers presently include: AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and VoiceStream Communications d/b/a T-Mobile.

[7] As of year-end 2001, the wireless carriers that fell into this category – in order of size – included: ALLTEL, US Cellular, Western Wireless, Leap Wireless, Qwest, Centennial Cellular, CenturyTel, Dobson Communications, Triton PCS, American Cellular, Rural Cellular Corp., and Price Wireless. Since 2001, other wireless carriers that were originally classified as Tier III carriers now possess over 500,000 subscribers and would be considered Tier II carriers under this proposal.

5. Next, wireline-to-wireless support ratios would be established for each of these tiers. Specifically, the wireless carriers in Tier III would be eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer. This is based upon the finding that wireless carriers invest $40 in infrastructure for every $100 spent on infrastructure by ILECs (see Point #2). Tier IV carriers, which represent the very smallest rural wireless providers, would be eligible to receive twice the per-line support level available to Tier III wireless carriers, or in other words, 80 percent of the ILEC's study area average per-line support. Conversely, Tier II carriers would be eligible to receive half of the per-line support level available to Tier III wireless CETCs, or 20 percent of the ILEC's study area average per-line support. Finally, Tier I wireless carriers would not be eligible to receive any USF support. This recognizes the fact that the national scope of Tier I carriers makes it possible for them to successfully serve all of their customers without receiving USF support, even if they happen to serve some high-cost rural markets.

- Tier IV Wireless CETCs: Eligible to receive 80 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier III Wireless CETCs: Eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier II Wireless CETCs: Eligible to receive 20 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier I Wireless CETCs: Eligible to receive 0 percent of the study area average per-line support received by the ILEC that offers service to the customer.

6. The ratios would serve as a "safe harbor" level of support for wireless CETCs. That is, if a wireless CETC chose not to report its actual costs for the purposes of determining USF support, then it would be able to receive support based upon the wireline-to-wireless support ratio that applies to their particular "tier." However, if the wireless CETC felt that its actual costs would justify a higher level of support than it would receive under the safe harbor ratio, then it could choose to report its costs in order to receive a greater level of support, up to *either* the level of per-line support received by the ILEC offering service to the customer or the statewide average per-line support, whichever is greater. For wireless carriers that have obtained ETC status prior to the implementation of this plan, there would be a two year transition period, after which they would begin to receive support based either on the ratio that applies to their particular tier or on their own costs.

7. Over time, should numerous wireless CETCs choose to report their own costs, a robust universe of wireless cost data would be created. This data could be used to create an average schedule-like process for determining wireless CETC support. Such a process would more closely link the support levels wireless CETCs receive with their actual costs.

8. Small rural wireless carriers are committed to bringing quality wireless service to traditional rural areas and have historically built out there networks to a much greater

degree in sparsely populated rural communities as compared to the large national and regional wireless carriers that primarily focus their build out and service enhancements in densely populated urban and metropolitan areas. Given both the apparent public benefit of small wireless carriers providing service in the sparsely populated rural portions of their markets and their limited financial resources, regulators are encouraged to streamline, expedite, and reduce the expense of the ETC designation process for Tier IV wireless carriers in rural and non-rural service areas.

9. In conclusion, this plan has a number of benefits:

- It is easy to manage.
- It would result in a more measured distribution of finite USF support, thereby controlling the overall growth of the fund.
- It would lessen the potential for large windfalls of support received by wireless CETCs, in excess of the CETC's actual cost requirements.
- It provides optionality to the CETC. Either they accept the safe harbor support level, or elect to perform a cost study and report their actual costs.
- It targets more support to small, rural wireless CETCs who most need it.
- It is based on factual investment data for wireline and wireless carriers.

## CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 20th day of September, 2004, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
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